TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~350~~ 112

JACK THORINGTON, APPELLANT,

vs.

WILLIAM B. SMYTH AND JOHN H. HARTLEY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

FILED AUGUST 27, 1847.

SUPREME COURT OF THE UNITED STATES.

No. 258.

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WILLIAM B. SMYTH AND JOHN H. HARTLEY.

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UNITED STATES OF AMERICA:

To William B. Smyth and John H. Hartley, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at the next term thereof, pursuant to an appeal from a decree of the district court of the United States for the middle district of Alabama, exercising circuit court powers in equity, wherein Jack Thorington is appellant and you are appellees, to show cause, if any there be, why the said decree should not be corrected, and speedy justice be done to the parties in that behalf.

Witness, Hon'ble Richard Busteed, judge of the district court of the United States for the middle district of Alabama, on this the 19th day of January, 1867.

RICHARD BUSTEED,
Judge District Court U. States for Middle Dis., Ala.
E. C. V. BLAKE, *Clerk.*

Received Jan. 19th, 1867. Eexcuted by serving notice on Stone, Clopton & Clanton, their solicitors, Jan. 19, 1867.

JOHN HARDY, *U. S. Marshal,*
Per L. J. BRYAN, *Deputy.*

Serving two copies, $4 00.

Filed in office, January 19th, 1867.

E. C. V. BLAKE, *Clerk.*

1 UNITED STATES OF AMERICA,
Middle District of Alabama:

At a district court of the United States for the middle district of Alabama, begun and held at Montgomery, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and sixty-six.

Present, the Honorable Richard Busteed, judge presiding.

Said district court sitting in equity, the following proceedings were had, to wit:

In chancery.

Bill.

To the Hon'bl Richard Busteed, judge of the district court of the United States of America for the State of Alabama, exercising chancery jurisdiction in the middle district of said State:

1. Humbly complaining, shows unto your honor, your orator, Jack Thorington, a citizen residing in said county of Montgomery, in the State of Alabama, that on the 26th day of November, 1864, he sold to William D. Smyth and John H. Hartley, who are at this time in the city and county of Montgomery, but who reside without the State

of Alabama, namely, Hartley in the State of Tennessee, and Smyth in the State of Georgia, the following lot or parcel of land, that is to say, being and situate in the county of Montgomery, east of the city of Montgomery, and being on the south side of the continuation of Adam street and the line creek road, bounded on the east by a certain lot of land conveyed by your orator to Alfred Laprade, bearing date August 22, 1852; on the west by a certain lot conveyed by your orator to Wm. R. Jones, bearing date Sept. 25, 1863,
2 and by three hundred feet, more or less, by the adjoining premises of the Hon. George W. Stone; on the north by two hundred feet of the south line of the said lot, conveyed as aforesaid, to the said Jones, and six hundred and forty feet, more or less, by the said continuation of Adams street and the said line creek road; and on the south, in the rear thereof, by the south line of the south-east quarter of section seven, in township sixteen, and range eighteen, containing about nine acres, more or less; for which said land said Smyth and Hartley agreed to give your orator the sum of forty-five thousand dollars, and were to pay, and did pay of that sum, the sum of thirty-five thousand dollars down, and gave their note for the sum of ten thousand dollars for the residue of said purchase money, dated the 28th day of November, 1864, whereby, one day after date thereof, said Smyth and Hartley promised to pay your orator or bearer the said sum of ten thousand dollars for value received in the real estate above described—a true copy of which note is hereto attached and made part of this bill, marked "exhibit No. 1;" and the defendants are hereby notified that the original note will be produced and proved upon the trial of this cause as an exhibit.

It will appear upon an inspection of said note, that the said Smyth and Hartley stipulated that a lien should exist upon said premises (notwithstanding your orator executed a conveyance to them) for the payment of the balance of the purchase money mentioned in said note; and your orator charges that such was the intention of all the parties to said contract of sale, and that said Smith and Hartley now own said land, subject to the lien aforesaid.

2. Orator charges that none of the said ten thousand dollars so promised by said Smyth and Hartley to be paid, has been paid to orator, or any one else for him, but the same has long since been due and payable, according to the tenor and effect of said note, and is now due and payable and unpaid.

3. Your orator charges that he is a citizen of and resident
3 of the county of Montgomery, and State of Alabama, and that the defendant Hartley is a citizen of the State of Tennessee, and the defendant Smyth is a citizen of the State of Georgia.

4th. In tender consideration of the premises, your orator prays your honor to order an account of the amount due and unpaid of said note for the balance of the purchase money, and that the amount, when ascertained, be declared a lien on said land; and that unless said amount be paid by a given day, that said premises be sold to pay the same, by the clerk acting as register of your honorable court, and that your orator have satisfaction of his said demand, and recover his costs, &c., &c.

May it please your honor to grant unto your orator the State's writ of subpœna, issuing out of your honor's court of chancery for the middle district of Alabama, returnable, &c., &c., that the said Smyth and Hartley be made defendants to this bill, and required to answer the same according to the command thereof, and to stand to and abide such order and decree in the premises as shall comport with equity and good conscience. If, however, your orator is mistaken in his remedy, he prays for such other, or further, or different relief as the nature and circumstances of his case may require. And he will ever pray, &c.

J. Q. SMITH,
CHILTON, THORINGTON & CHILTON,
Sol's for Compl't.

NOTE.—Defendants will answer, but without oath, the several paragraphs of this bill—number one, two, and three.

J. Q. SMITH,
CHILTON, T. & C.,
Sol's for Compl't.

Exhibit No. 1.

$10,000. MONTGOMERY, *Nov. 28th*, 1864.

One day after date, we, or either of us, promise to pay
4 Jack Thorington, or bearer, ten thousand dollars for value received in real estate, sold and delivered by said Thorington to us this day, as per his deed to us of this date; this note, part of the same transaction, is hereby declared as a lien or mortgage on said real estate, situate and adjoining the city Montgomery.

(Signed) W. D. SMYTH.
J. H. HARTLEY.

[Int. rev. stamp, $5].

Original bill filed this 7th day of October, 1865.
W. T. HARRIS, *Clerk.*

Subpœna.

UNITED STATES OF AMERICA,
Middle District for the State of Alabama:

The President of the United States of America to the marshal of the middle district of Alabama, greeting:

You are hereby commanded that you summon William D. Smyth a citizen of and residing in the State of Tennessee, and John H. Hartley, a citizen of and residing in the State of Georgia, if they shall be found in your district, to be and appear before the judge of the district court of the United States of America for the middle district of Alabama, exercising equity jurisdiction, at a court to be holden for said district, on the fourth Monday in November next, to answer a bill of complaint filed in our said district court against

them by Jack Thorington, of the State of Alabama; and this they shall in nowise omit, under the penalties prescribed by law and the rules of said court; and have you then and there this subpœna.

Witness, Richard Busteed, judge of the said district court, at Montgomery, in said district, this fourth Monday of June, A. D. one thousand eight hundred and sixty-five, and of American independence the ninetieth year.

Issued this 7th day of October, A. D. 1865.

Attest:

[L. S.]

W. T. HARRIS,
Clerk Dis. Cr't Mid. Dis., Alabama.

[50-cent. stamp.]

5 *Marshal's return.*

Re. 7th Oct.. Executed the within subpœna by delivering a copy thereof to William D. Smyth, on the 13th day of October, 1867, and on John D. Hartley by delivering him a copy thereof, on the 18th day of October, 1865.

JOHN HARDY, *Marshal,*
By W. B. GOWEN, *Deputy Mar.*

Decree pro confesso.

JACK THORINGTON
vs.
WILLIAM D. SMYTH, JOHN H. HARTLEY.

UNITED STATES OF AMERICA:

District court of the U. S. for mid. dist. of Alabama.—In chancery.

At rules held in the clerk's office of said court, on Monday, March 5th, 1866, in this case, it being made to appear to the clerk and register of the said court, that a summons, requiring the defendants, William D. Smyth and John H. Hartley, to appear and plead to, or answer the bill of complaint in this cause, within thirty days from the service of said summons upon them; and it appearing that said summons was served upon them by the marshall of the middle district, on William D. Smyth, on the 13th day of October, 1865, and upon the said John H. Hartley, on the 18th day of October, 1865, and the said defendants having failed to plead to, answer, or demur to the said bill to the date hereof; it is now, therefore, on motion of complainant's solicitors, ordered and decreed that the said bill of complaint in this cause be, and it hereby is, in all things, taken as confessed against the said William D. Smyth and John H. Hartley, defendants aforesaid.

Attest:

E. C. V. BLAKE,
Clerk U. S. Dist. Court for the Middle District of Alabama.

Motion set aside.

In the district court of the United States for the middle district of Alabama.

6 *Decree pro confesso.*

JACK THORINGTON
vs.
JOHN H. HARTLEY, WM. P. SMYTH.

Motion is made in this cause to set aside the decree pro confesso, and for leave to file an answer; the answer being now submitted and offered to be filed, the affidavit of defendant Hartley is offered in support of the motion.

STONE, CLOPTON & CL.
For motion.

To Messrs. Chilton & Thorington:
Filed June 6th, 1866.
E. C. V. BLAKE, *Clk.*

Affidavit of defendant Hartley.

In the district court of the United States, for the middle district of Alabama.

JACK THORINGTON
vs.
JOHN H. HARTLEY, WM. D. SMYTHE.

John H. Hartley, one of the defendants in this cause, makes oath, that when this suit was commenced, October 7th, 1865, he and his co-defendant, Smythe, were both in Montgomery, Alabama, attending to their business; but defendant Smythe was then suffering very much from the effects of a wound received two or three months before, from which he has never recovered; said wound being such as to incapacitate said Smythe for the performance of action—out doors work. Smythe removed to Georgia, about day of December, 1865, where he is now in wretched health, as affiant learns. When this suit was commenced, the defendants employed Walker & Clitheral, A. J. Walker, and Alex. B. Clitheral, as their attorneys, to represent them. Soon after the said suit was commenced, and before the first term of the court, (to which the suit was brought,) this affiant was hurried to Memphis, Tennessee, by receiving a telegram that his wife, who was then there, was very sick; affiant was delayed there sometime by his wife's sickness; and afterwards he got
7 into employment in Memphis, which engaged him untill his health became so bad, about two months before the sitting of this court, that he was unable to travel until about two or three weeks ago; he then hurried to Montgomery as rapidly as he could,

and reached here on the 26th May, 1866; affiant having able counsel employed, rested satisfied, for sometime, that his cause would be properly attended to; but writing some two or three months before this court, to his counsel, he received a letter from A. B. Clitheral, some two months ago, informing him that he must come to Montgomery, his health, as above stated, was then such that he could not come. This letter was the first received from his counsel after leaving here early in November, 1865; affiant did not learn, until he reached here, May 26th, 1866, that no answer had been put into said bill, or that a decree pro confesso had been taken against him; affiant, also, then learned for the first time, that his counsel, A. J. Walker, had been elected judge of the supreme court of Alabama, during the session of this court last fall; and that, since that time, he said Walker, has taken no part in the defence of said suit; affiant further states, that reaching Montgomery, as before stated, he found said A. B. Clitheral in wretched health, utterly unable to attend to business, and then learned that said Clitheral had been in bad health for four or five months; affiant then procured the services of other counsel, who are now attending to this case. Early last week affiant had an answer made out to this bill, and filed the same with the clerk of this court, which affiant is advised by his counsel is a full and complete answer to complainant's bill; affiant is advised by his present counsel, that the reason they did not move earlier to set aside the decree pro confesso in this cause, and have that decree set
8 aside before they filed the answer, is that said A. B. Clitheral informed them, before he left for the springs, that the complainant had agreed to receive the answer at this term, and to set the decree aside; affiant's counsel informed him that they rested securely on said representation of said A. B. Clitheral, untill the 5th day of June, inst., when said complainant, for the first time, informed them that no such agreement had been made by him; affiant does not make this application to obtain delay, but that he may have a fair trial; affiant's counsel have prepared interrogatories to take the testimony they rely on in this cause, and said interrogatories have been in the hands of complainants for several days. If complainant will cross said interrogatories, he believes he will be ready for trial during the present of this court. The witnesses all reside in this city.

J. H. HARTLEY.

Subscribed and sworn to, June 6th, 1866, before me.
E. C. V. BLAKE, *C'lk.*
By N. W. TRIMBLE,
Dep. C'lk.

Filed June 14, '66.
E. C. V. BLAKE, *C'lk.*

Decree "pro confesso" set aside.

Ordered, at May term, 1866, that the decree "pro confesso," granted March 5th, 1866, be set aside on payment of $10 costs

and on condition of filing answer within ten days, leaving out all as to jurisdiction, also, to furnish copy of the pleadings.

Answer.

In the district court of the United States of America, for the middle district of Alabama.

The joint answer of William D. Smythe and John H. Hartley to the bill of complaint exhibited in said court by said Jack Thorington against these defendants.

9 The court having set aside the decree pro confesso heretofore rendered by the clerk of this court in this cause, and the order setting aside such decree pro confesso being made on certain conditions, one of which is, that these defendants shall waive and abandon all plea and defence to the jurisdiction of this court growing out of the question of residence of the parties; and the defendants accepting the terms imposed, answering say:

They admit the truth of every material allegation contained in complainant's said bill. with the qualification and explanation, that in negotiating and making the purchase of the said tract of land in the first paragraph of the said bill described, they, the said parties, were all residents of the city and county of Montgomery, in the State of Alabama; that said negotiation was commenced, carried on, and concluded at said place; that said lands were then unimproved territory outside of the city limits, and but of little value, not exceeding the sum of three thousand dollars in lawful current money; that at that time, to wit, November 26th, and 28th, 1864, when said contract was made, there was in fact no lawful money or currency in circulation within the State of Alabama; that the government and authority of the United States was then destroyed and overthrown in all that part of the State of Alabama which includes the city and county of Montgomery; and that the circulating medium at that time, and in said county, was the treasury notes of the so-called Confederate States of America, and that said contract was made with the understanding and agreement, that the same should be discharged in confederate treasury notes, and not in money current or lawful by the laws of the United States, that said confederate treasury notes had at that time a nominal value in said city and county, and were in fact worth not more than one dollar in money, for twenty-five in such currency, that although said purchase purports on its face to be

10 for the sum of forty-five thousand dollars, no such contract was in fact made; that the payment of the sum of thirty-five thousand dollars, which the papers and pleadings in the cause show to have been made, was in fact only nominally that sum, the payment being made in that amount of treasury notes of the confederate States.

Having, as they are advised, fully answered these defendants ask to be discharged, with costs, &c.

STONE, CLOPTON & CLANTON,
ALEX. B. CLITHERAL, *Sol's for Def'ts.*

Filed June 15, '66. E. C. V. BLAKE, *Cl'k.*

Replication.

The replication of Jack Thorington, the complainant, to the answer of William D. Smyth and John H. Hartley, filed in the district court of the United States for the middle district of Alabama:

This repliant, saving and reserving to himself all, and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto, saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed and denied, is true; all which matters and things, this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

SMITH & CHILTON,
Sol's for Compl't.

11 Upon application to file the foregoing replication as of the 20th day of June, it is ordered, sufficient reasons appearing, that the same be now filed as of that date, Dec. 15th, 1866.

RICHARD BUSTEED,
Dis. Judge sitting in equity.

Replication filed by order, nunc pro tunc, as of 20 June, 1866.
E. C. V. BLAKE, *Clerk.*

Interrogatories in chief.

In the district court of United States for the middle district of the State of Alabama.—In chancery.

JACK THORINGTON,
vs.
JOHN H. HARTLEY, WM. D. SMYTHE.

Interrogatories propounded to witnesses, proposed to be examined for defendants in this suit; the answers to which, when taken, will be offered in evidence for defendants on the trial of this cause.

Interrogatories to M. A. Chisolm.

To witness Marion A. Chisolm:

1st. Do you know the parties to this suit?

2nd. Did you ever act as agent for the complainant in making a trade with the defendants? If so, what was the trade, what the subject matter, and when made? Had you authority from said Thorington to make the trade, and state whether or not said Thorington confirmed your action by closing said trade in writing? If you say you, as agent of said Thorington, negotiated a sale of lands to de-

fendants, please describe the land by proper bounds and other marks of identification, so as to show what land was sold. If the deed for said land is shown to you, state whether you know anything about it, and what you know of it. State if you ever negotiated any other trade with plaintiff and defendants.

3rd. What was the contract price of said land; what sort of money or currency was it agreed or understood should be paid; what
12 sort of money or currency was used or employed in paying the cash payment; and what was the understanding of the parties as to currency to be used in the payment of the part left unpaid? State any fact and circumstance you know tending to show that said sale was made with the agreement and understanding that the payment was to be made in treasury notes of the confederate States.

4th. If the note which is the foundation of this suit is shown to you, please state all you know tending to show that said note was, by the agreement or understanding of the parties, to be paid in confederate treasury notes; and tell all else you know that will benefit defendants.

Interrogatories to E. M. Hastings.

To E. M. Hastings:

1st. Do you know the parties to this suit?

2nd. What is your present occupation, and how long have you been engaged in your present business? If you have been a banker, or officer of a bank, state whether the defendants kept a bank account with you during the months of November and December, 1864.

3rd. If you, at any time, cashed a check for a large amount, drawn by defendants, and presented by or for complainant, attach the check to your answer, and state when *when* you cashed it. Who presented it for payment? How much was paid on the check, and in what currency was it paid? and if you cannot produce the check, state that fact, and give the contents of the check. State the value of confederate money at that time.

4th. Please state what description of funds defendants had on deposit with you at the time specified; state what funds or description of funds they ever had with you; state what description of funds was then used in your banking transactions; and state everything you know tending to show that the payment was made in confederate treasury notes.

13 *Interrogatories to S. Sheusler, M. Garrison, P. J. Anderson.*

To Stephen Schuesler, Moses Garrison and P. J. Anderson:

1st. Do you know a lot of ground formerly owned by Jack Thorington, and afterwards claimed by Hartley & Smythe, east of the city of Montgomery? If so, describe it by abutments, notes, and bounds, or by stating the lands it adjoins, so as to make the place understood; but, in doing so, leave out a lot in the northwest corner of it, being two hundred east and west, and 300 feet north and south.

2nd. What was the real value of that land, or lot of land, in current money of the United States, on the 26th and 28th of November, 1864? Give your best judgment on this subject, and tell how long you have lived about Montgomery, and whether or not you are acquainted with the value of such real estate. Tell whether it had any and what improvements on it at that time.

3rd. What was the market value of treasury notes of the Confederate States on the 26th and 28th November, 1864? What was the currency used in and about Montgomery and central Alabama at that time? If you say confederate treasury notes, state if they were the sole currency used in general transactions; and state whether or not this part of Alabama was, at that time, in the occupation of the belligerant authorities of the confederate States, and whether or not the authorities of the United States exercised any actual authority or control in this part of Alabama.

Mr. Jack Thorington, or Messrs. J. Q. Smith, and Chilton & Thorington, his solicitors:

Take notice, the foregoing interrogatories are on file with the clerk and master of said court; and, after ten days' notice, a commission will be prayed for from said clerk and master, to have said interrogatories executed and the depositions taken. You can cross the interrogatories if you wish; and you are notified to produce the note on which your said suit is founded before the commissioner, on the examination of the witness, M. A. Chisolm, or oral evidence of its contents will be given.

STONE, CLOPTON & CLANTON,
Sol's for Def't.

14 Complainant objects, severally, to such parts of the third direct interrogatory as reads as follows: "What sort of money or currency was it agreed or understood should be paid?" "What was the understanding of the parties as to currency to be used in the payment of the part left unpaid? State every fact and circumstance you know tending to show that said sale was made with the agreement and understanding that the payment was to be made in treasury notes of the confederate States," upon the grounds that the deed and note given, upon which this action is founded, are in writing, and that this part of said interrogatory seeks to vary a written contract, is irrelevant and illegal, and raises a false issue.

The complainant objects to the 4th interrogatory upon the same grounds stated in objections to the 3rd.

The complainant objects to such parts of the 3rd direct interrogatory to E. M. Hastings as are in these words: "And if you cannot produce the check, state that fact, and give the contents of the check," because it undertakes to prove the contents of a written instrument without sufficient predicate, is irrelevant and illegal. Also to that part of the interrogatory which in these words: "State the value of confederate money at that time," because it seeks to vary a written contract, is irrelevant and illegal, the contract on which this action is founded being in writing.

Complainant objects to the 4th interrogatory upon the same grounds, and to the latter part of it in these words, "State everything you know tending to show that the payment was made in confederate treasury notes," upon the ground that it is leading, illegal and irrelevant.

Complainant objects to the 2nd interrogatory to Stephen Scheusler, Moses Garrison, and P. J. Anderson, which is in these words, "What the real value of that land, or lot of land, in current money
15 of the United States, on the 26 and 28th of November, 1864? Give your best judgment on this subject," upon the grounds that the deed and note on which this action is founded is in writing, and that it seeks to vary a written instrument, is irrelevant and illegal.

Complainant objects, severally, to such parts of the 3rd interrogatory which is in these words, "What was the market value of treasury notes of the confederate States on the 26 and 28th November, 1864," and also in these words, "What was the currency used in and about Montgomery and central Alabama?" upon the grounds stated in objections to the 2nd interrogatory, and to the remainder of said 3rd interrogatory upon the same grounds.

Reserving these and all other legal objections to the interrogatories, the complainant propounds the following cross-interrogatories.

C. & T. *for Compl't.*

Cross-interrogatories to M. A. Chisolm.

Cross-interrogatories to be propounded to M. A. Chisholm:

1st. What business were the defendants carrying on in the city of Montgomery at the time of the said purchase of real estate?

2. If you answer in regard to any trade made between said parties, then please state if said trade was not made directly between complainant and defendants, first for a part of said real estate for sixteen thousand dollars, or some such sum, and afterwards for a larger piece of land, and upon terms agreed upon between said parties directly, and not by yourself, as agent. If you answer that you are agent of complainant to a certain extent in the sale of said land, then please state if it was not stated by said complainant to the defendants, that the valuation of said property in good money before the war was twenty thousand dollars, and that he sold the
16 same to them at the ratio of about two to one of such valuation of good money. Did not such a conversation take place in front of the property at the time of sale, and did you not, as agent, previously have conversation with them of similar character? At the time of sale, was not real estate frequently, or altogether, sold at the estimate of only two or three to one of the value of the same, prior to the war, in good money, about Montgomery? Were you not, at that time, a real estate broker in the city of Montgomery, and was not this sale and sales of real estate made at that time generally at an advance over the former valuation, in good money, of double, or, at the highest, three hundred per cent. in confederate currency?

Were not slaves, at that time, sold at that rate? Were you not also a cotton broker at the time of said sale, or about that time? If so, please state the rates in confederate currency in October or November, 1864, about the time of said trade for cotton, and what the rates for cotton in Montgomery, New Orleans, or New York. After the war, did not cotton reach as high, or higher prices in greenbacks, than it sold for at the time of the trade in confederate currency? Did not cotton, in some markets, before or after the war, fluctuate in price, and reach to upwards of a dollar a pound in United States currency? Did you not, about the time of said sale, frequently buy and sell real estate, as broker, at only two and three hundred per cent. as an extreme rate above the prices existing for the same prior to the war? Does not real estate in the city of Montgomery, and adjacent thereto, now sell for as much, or more, in United States currency as it sold for in currency at the time of said sale? Do you not know of some trades of that character in real estate, in which the valuation at this time, in United States currency, is more than it was at the time of said sale in confederate currency? Please answer this interrogatory fully. Was not the property eligibly situated, and of such locality and advantages as to greatly
17 increase in value? Was there not some of the most valuable residences in the city in that neighborhood?

3. If the confederate States had been successful in the late war or peace had been declared between the United States government and the so-called confederate States, or if the United States were to be victorious, was there any agreement in such event, or in any other way, between the complainants and defendants, by which the complainant was to compromise the note on which this suit is founded, or to take less than the amount and interest, or that its legal and bona fide character should in any manner be affected thereby? Was not the said note for ten thousand dollars (before signing) read by the complainant to the defendants in your presence, and signed by them without one word of objection or explanation? Was it not the opinion of many of our citizens at that time that the United States government would become tired of the war, and a compromise be entered into, and in that event that confederate currency would become as good, or at par with the United States currency? Where do the defendants reside? Did they not remove from Montgomery, Alabama, in October, 1864, or about that time? As to the currency, the enquiry made is as to public opinion and not your own.

4th. Are not rents for stores and dwelling houses in Montgomery, adjoining and adjacent, at this time, higher in United States currency than they were in confederate currency, in October and November, 1864? Are not they in some instances one hundred per cent. higher? Are they not in some instances two hundred per cent. higher? If not, then state how much higher, and the rate of advance generally. Has not some buildings advanced three or four hundred per cent., notwithstanding the change of funds; and is not all property which is rented, almost without exception, higher in United States currrency than in treasury currency in October and

November, 1864? Was not the contract between said com-
18 plainant and defendants reduced to writing? Did not the deed and note embrace the whole contract? At the time of the contract, (Oct'r and Nov'r, 1864,) what was the advance in confederate currency over the former cash or money value of articles of prime necessity, such as bacon, corn, rice, &c., oats? Were you not, as real estate agent and broker, offering lands for sale at an advance of double or one hundred per cent. higher in confederate currency, over and above their former value in good funds at that time, namely, in the fall of 1844, and was not that generally the rate of advance?

Cross-interrogatories to E. M. Hastings:

1st. If you held any position with the Central Bank at the time enquired of in the direct interrogatory, then please answer how long you have been connected with or in the employ of the Central Bank? Did not said bank advance large sums of gold, and also in other good funds or money, for confederate government securities, say treasury notes or bonds of said government, at different times? please specify the amounts as well as you can remember, and fully state the terms, &c. Did not the bank also advance largely to the State of Alabama, on similar terms or otherwise? If so, state the terms and amounts, and specially in regard to the transactions had with the State with respect to confederate treasury notes. Were not all of such transactions made at or about par value? If not, state the difference, and when made. State if purchases made in confederate treasury notes of real estate in Montgomery, and adjacent, about September and October, 1874; whether or not said real estate at this time is not worth as much or more in United States treasury notes? What business did the defendant carry on? State whether or not the purchases of cotton during the year 1864 were made or conducted on the basis of confederate treasury notes. Have not cotton, purchased by the bank and others in 1864, in confederate treasury notes, sold since the war for as much in United States treasury notes as it cost
19 in confederate treasury notes? If not, state the difference. Did not the bank, prior to and during the year 1864, receive on deposite, and pay out on check or otherwise, confederate treasury notes at its counter, as they formerly did bank notes; and was it not the currency of the State at that time? At what rate or price could cotton of middling quality be purchased at in Montgomery, or adjacent counties, about October or November, 1864, for confederate treasury notes? Could it not have been bought at or about fifty cents per lb?

Does not real estate, viz, stores and dwelling house, rent at this time at higher rates in United States currency than it did in confederate currency in the fall of 1864?

Cross-interrogatories to Stephen Schuesler, Moses Garrison, and J. P. Anderson:

1st. How can you understandingly or truly answer the second direct interrogatory? How can you state the "real value" of said

lot of land at the time mentioned, "in current money of the United States?" Do you not know there was no money of the United States current here, and had not been for the last year or two, and that it was not in use in Montgomery at that time in the purchase of real estate or anything else? Please answer this question fully. Was not the whole State of Alabama in a revolutionary condition at that time politically, and the values of all kinds of property overturned and changed, and varying every month or so? Could you tell the real value at that time of any kind of property in United States currency? As to your best judgment, did you at that time have any judgment about it, good or bad? If you say any value in United States currency, then state what was your standard of valuation. Was not everything changing in value? If you should state any value of said land in United States funds, how did you arrive at such value? State the process fully and particularly. Have you answered the said direct question, each of your own knowledge?

20 About the time mentioned, did not articles of trade advance one hundred per cent., or double the value, in a week or so, and quadruple the value or more in a month? Did not a large advance sometimes take place in a day or so in some articles of trade, or speculation, say one hundred per cent.? Was it not notorious that at that time there was not a standing price or standard value for anything, or any kind of property, real or personal; that every one asked what he pleased or thought proper for anything he had to sell, and that speculation pervaded the whole community? Was not greenbacks, whenever they reached Alabama at the time mentioned, picked up for blockade running and speculation, and bringing articles of trade from Europe or the United States into Alabama, and sold for a profit of from one hundred to a thousand per cent.? Was there not a plank fence around said property? Was not the value of United States treasury notes (commonly called greenbacks) very much affected or regulated by blockade running? Was there any standard value or regularity of price for real estate at the time mentioned? And in trades of thirty or forty thousand dollars, or more or less amount, would not such trades differ or vary in comparison, some being 25 or 50, or even one hundred per cent. higher price in proportion than others? Was not such trades at the time aforesaid regulated by the want of money by the seller, or the desire of the purchaser to invest; the want of judgment on the part of buyer or seller, or the partiality of some persons for some particular locality?

2nd. If you state anything about the belligerent authorities of the U. States, was it not in April, 1865, that Wilson's raid occupied Montgomery, and not until then? If you say you are acquainted with said real estate, was it not of such description and locality as to greatly improve in character and value; and without particularizing, was there not some of the finest and most valuable residences nearly opposite to, and also in the neighborhood, that *that* could be found in the city? Are not rents of stores and dwelling

21 houses in Montgomery, and adjacent or adjoining, at this time, more in United States treasury notes than they were in con-

federate treasury notes in October and November, 1864? Are they not in some instances one hundred per cent. higher? Are they not in some instances two hundred per cent. higher? If not, state how much higher generally. Please answer this fully and particularly. Are not all kinds of rented property higher by an average of one hundred per cent. in United States currency than it was in confederate currency in October and November, 1864? If not, state what is the proportion. Did not a successful battle and blockade speculation, hopes and fears as to the result of the war, and the facility or difficulty of getting outside the lines, all greatly effect the value of greenbacks?

CHILTON & THORINGTON,
Sol's for Compl't.

The defendants object to each of the following clauses in the cross-interrogatories propounded by complainant to witnesses, M. A. Chisolm et al, and objects to all answers to the same, as illegal and irrelevant; and moves separately to reject each clause and the answers thereto.

"Then please state if it was not stated by said compl't to the def'ts, that the valuation of said property, in good money, before the war, was twenty thousand dollars."

Objects to all proof given, offered, or asked for, tending to show, that about that time, "real estate was frequently, or altogether sold at the estimate of two or three to one of the value of the same prior to the war, in good money about Montgomery."

Objects, also, the clause which inquires if sales of real estate were made, at that time, generally at an advance over the former
22 valuation in good money of double, or at the highest three hundred per cent. in confederate currency.

Objects to all proof of price, or ratio of increase price, at which slaves and cotton were bought and sold at that time, as illegal and irrelevant.

Objects to all proof of the relative prices of cotton within the theatre of rebellion, in confederate currency, and without that theatre, in United States currency, as illegal and irrelevant, and not furnishing any just measure of value.

Objects to all comparison of rents in the city of Montgomery, before or during, and since the war, as illegal and irrelevant.

Objects to all proof of particular sales, for confederate money, of other property, and to proof tending to show that other lands were sold for confederate currency, at a price not above their present value in United States currency as illegal and irrelevant.

Objects to all proof by the witness, Chisolm, of the rate of advance at which he, as broker, was then offering other lands for sale, as illegal.

Objects to all proof tending to show, that stores and dwellings, now rent in the United States currency for a higher ratio than they rented during the war in confederate currency, as illegal and irrelevant.

lot of land at the time mentioned, "in current money of the United States?" Do you not know there was no money of the United States current here, and had not been for the last year or two, and that it was not in use in Montgomery at that time in the purchase of real estate or anything else? Please answer this question fully. Was not the whole State of Alabama in a revolutionary condition at that time politically, and the values of all kinds of property overturned and changed, and varying every month or so? Could you tell the real value at that time of any kind of property in United States currency? As to your best judgment, did you at that time have any judgment about it, good or bad? If you say any value in United States currency, then state what was your standard of valuation. Was not everything changing in value? If you should state any value of said land in United States funds, how did you arrive at such value? State the process fully and particularly. Have you answered the said direct question, each of your own knowledge?

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21 houses in Montgomery, and adjacent or adjoining, at this time, more in United States treasury notes than they were in con-

federate treasury notes in October and November, 1864? Are they not in some instances one hundred per cent. higher? Are they not in some instances two hundred per cent. higher? If not, state how much higher generally. Please answer this fully and particularly. Are not all kinds of rented property higher by an average of one hundred per cent. in United States currency than it was in confederate currency in October and November, 1864? If not, state what is the proportion. Did not a successful battle and blockade speculation, hopes and fears as to the result of the war, and the facility or difficulty of getting outside the lines, all greatly effect the value of greenbacks?

CHILTON & THORINGTON,
Sol's for Compl't.

The defendants object to each of the following clauses in the cross-interrogatories propounded by complainant to witnesses, M. A. Chisolm et al, and objects to all answers to the same, as illegal and irrelevant; and moves separately to reject each clause and the answers thereto.

"Then please state if it was not stated by said compl't to the def'ts, that the valuation of said property, in good money, before the war, was twenty thousand dollars."

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Objects to all proof of price, or ratio of increase price, at which slaves and cotton were bought and sold at that time, as illegal and irrelevant.

Objects to all proof of the relative prices of cotton within the theatre of rebellion, in confederate currency, and without that theatre, in United States currency, as illegal and irrelevant, and not furnishing any just measure of value.

Objects to all comparison of rents in the city of Montgomery, before or during, and since the war, as illegal and irrelevant.

Objects to all proof of particular sales, for confederate money, of other property, and to proof tending to show that other lands were sold for confederate currency, at a price not above their present value in United States currency as illegal and irrelevant.

Objects to all proof by the witness, Chisolm, of the rate of advance at which he, as broker, was then offering other lands for sale, as illegal.

Objects to all proof tending to show, that stores and dwellings, now rent in the United States currency for a higher ratio than they rented during the war in confederate currency, as illegal and irrelevant.

Objects, also, to all proof of comparative values in the United States currency and confederate currency, of any and all other articles or commodities, or leasehold interests as illegal and irrelevant.

STONE, CLOPTON & CLANTON, and
CLITHERALL,
For Def's.

Rebutting interrogatories to Chisolm.

Re-examination:

1st. To witness Chisolm. If you answer to cross-interrogatory that either yourself or complainant made any statement to defendants, about the time of the trade, to the effect that the price at which the property was sold to defendants, was only about the price had been asked for the property in good money; then state why it was that such increased price was asked? Was or not this
23 in consequence of the description of currency to be used in the purchase? What description or kind of currency was this? Was it not confederate money? Was the property worth in good money one-half or near that sum of the price agreed on by Hartley & Smythe, to wit: $45,000? Tell, if you can, how much said lot of ground was then worth in good and current money of the United States? How much in coin? What would the place have commanded in the market at that time in good and current money?

Rebutting to E. M. Hastings.

2nd. To E. M. Hastings. If you say the bank, of which you were an officer, paid out its coin for confederate or State securities during the war, then state when this was done; was it or not at an early stage of the war? What was the current value of confederate and State securities when that transaction was perfected, and what were their values Nov. 26, '8, 1864? Now state if such transactions were not entered into by the bank that it might aid the south, or Alabama, in the struggle for southern independence. State if the loan, or exchange of coin for securities, State or confederate, was a regular, or legitimate, or customary banking transaction. If not, what induced or moved the bank to the making of the loan or exchange? Do you intend to be understood as saying that the bank, at any time during the war, would have exchanged its coin for confederate or State securities, as a mere business transaction? Would it have made such exchange, or did it make such exchange about November, 1864, or after that time?

3rd. To same. If you say the bank received confederate treasury notes on deposit, and paid them out, what was the cause or motive of this? Was there any other currency in circulation? Was or was not this policy also adopted by the bank that it might aid in
24 upholding the credit and currency of the southern cause? Was, or was not, this all done in a spirit of loyalty to the so-called confederate States? If you say the bank received confederate

treasury notes on deposit, state if the bank did or would pay out, on the order of its depositors, the notes of its own issue or its coin. If it at any time did this, when did it cease?

Rebutting interrogatories to Schuesler, Garrison, & Anderson.

4. To Schuesler, Garrison, & Anderson. If you say speculations were rife, and money fluctuating during the war, then state if about and during the month of November, 1864, the confederate currency was not continually going lower and lower, and had become almost valueless. Were not the holders of that currency, at that time, generally willing and anxious to invest it in property at enormous prices, and in almost any description of property that had a value, and on the best terms they could get, no matter how high? What were the then current rates in confederate money of each of the following articles, flour, bacon, beef, sugar, coffee, tea, wool, osnaburgs, shirtings, American and English prints, shoes, iron, nails, horses, mules, milch cows, and what per cent. of difference was there at that time between the prices of each of these articles, and the price of the same before and since the war? Were they higher or lower during the month of November, 1864, than they were before and since the war?

STONE, CLOPTON & CLANTON,
Sol's for Defendants.

25 *Answer of M. A. Chisolm.*

JACK THORINGTON,
vs.
JOHN H. HARTLEY, WM. D. SMYTHE.

Answer of Marion A. Chisolm to interrogatories propounded to him in the case of Jack Thorington *vs.* John H. Hartley and Wm. D. Smythe, which are to be used as testimony in the United States district court for the middle district of Alabama, in the aforesaid case. Taken before W. R. R. Wyatt, acting U. S. commissioner for middle district of Alabama, on the 19th day of October, A. D. 1866.

In chancery.

Direct interrogatories:

To the 1st direct interrogatory deponent answers, that he knows the parties to this suit.

To 2nd interrogatory deponent answers, that he did act as agent for the complainant in making a trade with the defendants. That he sold a piece of land lying upon the "Mount Meigs road," to the defendant for the complainant, and think the bargain was made in the fall of 1864. Says he had authority from Thorington to make the trade, and said Thorington confirmed his action on the premises by closing the trade in writing. The land sold by deponent lies on the "Mount Meigs" road leading into Montgomery, and is bounded on

the north by said road, and on the west by Judge Stones and directly across the road from the residence of Moses Garrison, the owners of the property bounding it on the east and south are not known to this deponent. Never negotiated any other trade between plaintiffs and defendants.

To the 3 interrogatory deponent says, that the contract price of said land was forty-five thousand dollars. Confederate States treasury notes was the currency for which it was agreed and understood the land was sold. The part paid was paid in confederate States treasury notes and the part unpaid was to be paid in the same currency. Deponent says of his own knowledge, that the land was sold for confederate States treasury notes and for nothing else.

26 To the 4th interrogatory deponent answers, that the note upon which this action is founded has not been shown to him, but the note given by the defendants for the portion unpaid on the land, was to be paid in thirty days, and to be paid in confederate States treasury notes.

To 1st cross-interrogatory deponent says, that the defendants were, at the time of the purchase of this land, carrying on the iron foundry business—making shells for the confederate government.

To 2nd interrogatory deponent answers, that he, as agent of Thorington, negotiated the trade, but the consummation of the trade was between the complainant and defendant personally, in the house of John H. Hartley. Deponent says that he, as agent of Thorington, brought the land into market; that at the time of the trade, the deponent, Jack Thorington, John H. Hartley, and Wm. D. Smythe, were on the land looking at and examining it; that part of the land was first sold for some amount not now by him remembered, and before leaving the land, the whole of was sold by deponent, with the consent of Thorington, for $45,000. Deponent further says, that it was stated by complainant to defendants, that the value of said property in good money, before the war, was twenty thousand dollars; and that he sold the same to them at the ratio of about two to one of such valuation of good money, or words to that effect. The conversation above mentioned did take place in front of the land, and deponent did have similar conversation with the defendants previously; at the time of sale real estate was frequently sold at the estimate of only two or three to one of the value of the same, prior to the war in good money, about Montgomery. Was at that time a real estate broker in the city of Montgomery, and says that real estate sold in Montgomery, at that time, from two hundred to four hundred per cent. above prices before the war. Slaves at that time

27 were sold at about the same rate. Was also a cotton broker in Montgomery at that time, and the rates for cotton at that time ruled from sixty-five to seventy cents in Montgomery, the highest price reached by cotton in New Orleans or New York after the war, to the best of his recollection was seventy-five to eighty cents; knows of no cotton, sold after the war, in any market of the United States at one dollar a pound in U. S. currency. Deponent says that real estate in Montgomery, improved, sells nearly as high for U. S.

treasury notes as it did for confederate money at that time, but unimproved property is not so high by fifty per cent. Deponent knows of no trades in real estate of any kind; considers the question answered fully; the property was elligebly situated, and had it not have been for the political disturbances of the country might have greatly increased in value; there are some of the most valuable residences in the city in that neighborhood.

To 3rd cross-interrogatory deponent says, that he knows of no agreement between complainant and defendants, whereby the trade between them was to be in any way effected by the success or defeat of the confederate States, or by the victories of the United States, or by a peace between the belligerant powers. He only knows that the land was sold for forty-five thousand dollars in confederate money. Deponent says that the note of ten thousand dollars given by defendants to complainants was signed in his presence, without objection or complaint. Deponent cannot say what was the opinion of the citizens in relation to the termination of the war, and the ultimate value of confederate States treasury notes. Does not know where the defendants reside, nor does he know at what time they removed from Montgomery.

To the 4th cross-interrogatory deponent answers, that stores and dwelling houses in Montgomery are higher now, in U. S. currency, than they were in October and November, 1864, owing to the increased business. Stores, are in some instances, from one
28 hundred to two hundred per cent. higher in their rents. Cannot answer whether all property that is rented is higher or not. Says that the contract between complainant and defendants was reduced to writing; and that the note and deed did embrace the whole contract. At the time of the contract, (Oct., 1864,) the advance in articles of prime necessity, such as corn, bacon, &c., amounted, in the city of Montgomery, to from four hundred to five hundred per cent. at that time; as real estate broker, was offering lands for sale at an advance of one hundred per cent. over the former price of said lands in good money.

Rebutting interrogatory:

To rebutting interrogatory deponent says, the first portion of this interrogatory has been fully answered; cannot say whether the property was, or was not, worth half the amount in good money for which it was sold to defendants in confederate money; cannot tell what the land was worth in good and current money of the United States, nor cannot say what it was worth in coin.

M. A. CHISOLM.

I. M. A. Chisolm, solemnly swear that the answers given by me to the foregoing interrogatories are true and correct, to the best of my knowledge and belief. M. A. CHISOLM.

Subscribed and sworn to before me, on this the 19 day of October, A. D. 1866.

W. R. R. WYATT,
U. S. Commissioner for Middle Dis't of Alabama.

the north by said road, and on the west by Judge Stones and directly across the road from the residence of Moses Garrison, the owners of the property bounding it on the east and south are not known to this deponent. Never negotiated any other trade between plaintiffs and defendants.

To the 3 interrogatory deponent says, that the contract price of said land was forty-five thousand dollars. Confederate States treasury notes was the currency for which it was agreed and understood the land was sold. The part paid was paid in confederate States treasury notes and the part unpaid was to be paid in the same currency. Deponent says of his own knowledge, that the land was sold for confederate States treasury notes and for nothing else.

26 To the 4th interrogatory deponent answers, that the note upon which this action is founded has not been shown to him, but the note given by the defendants for the portion unpaid on the land, was to be paid in thirty days, and to be paid in confederate States treasury notes.

To 1st cross-interrogatory deponent says, that the defendants were, at the time of the purchase of this land, carrying on the iron foundry business—making shells for the confederate government.

To 2nd interrogatory deponent answers, that he, as agent of Thorington, negotiated the trade, but the consummation of the trade was between the complainant and defendant personally, in the house of John H. Hartley. Deponent says that he, as agent of Thorington, brought the land into market; that at the time of the trade, the deponent, Jack Thorington, John H. Hartley, and Wm. D. Smythe, were on the land looking at and examining it; that part of the land was first sold for some amount not now by him remembered, and before leaving the land, the whole of was sold by deponent, with the consent of Thorington, for $45,000. Deponent further says, that it was stated by complainant to defendants, that the value of said property in good money, before the war, was twenty thousand dollars; and that he sold the same to them at the ratio of about two to one of such valuation of good money, or words to that effect. The conversation above mentioned did take place in front of the land, and deponent did have similar conversation with the defendants previously; at the time of sale real estate was frequently sold at the estimate of only two or three to one of the value of the same, prior to the war in good money, about Montgomery. Was at that time a real estate broker in the city of Montgomery, and says that real estate sold in Montgomery, at that time, from two hundred to four hundred per cent. above prices before the war. Slaves at that time

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treasury notes as it did for confederate money at that time, but unimproved property is not so high by fifty per cent. Deponent knows of no trades in real estate of any kind; considers the question answered fully; the property was elligebly situated, and had it not have been for the political disturbances of the country might have greatly increased in value; there are some of the most valuable residences in the city in that neighborhood.

To 3rd cross-interrogatory deponent says, that he knows of no agreement between complainant and defendants, whereby the trade between them was to be in any way effected by the success or defeat of the confederate States, or by the victories of the United States, or by a peace between the belligerant powers. He only knows that the land was sold for forty-five thousand dollars in confederate money. Deponent says that the note of ten thousand dollars given by defendants to complainants was signed in his presence, without objection or complaint. Deponent cannot say what was the opinion of the citizens in relation to the termination of the war, and the ultimate value of confederate States treasury notes. Does not know where the defendants reside, nor does he know at what time they removed from Montgomery.

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Rebutting interrogatory:

To rebutting interrogatory deponent says, the first portion of this interrogatory has been fully answered; cannot say whether the property was, or was not, worth half the amount in good money for which it was sold to defendants in confederate money; cannot tell what the land was worth in good and current money of the United States, nor cannot say what it was worth in coin.

M. A. CHISOLM.

I. M. A. Chisolm, solemnly swear that the answers given by me to the foregoing interrogatories are true and correct, to the best of my knowledge and belief. M. A. CHISOLM.

Subscribed and sworn to before me, on this the 19 day of October, A. D. 1866.

W. R. R. WYATT,
U. S. Commissioner for Middle Dis't of Alabama.

29 *Answer of E. M. Hastings.*

JACK THORINGTON
vs.
JOHN H. HARTLEY & WM. D. Smythe.

Answers of E. M. Hastings to interrogatories, which answers are to be used as testimony in the *the* United States district court for the middle district of Alabama, in the case of Jack Thorington *vs.* John H. Hartley and Wm. D. Smythe. Taken before W. R. R. Wyatt, acting commissioner for the district aforesaid, on this 17th day of October, A. D. 1866.

In chancery.

Answers to direct interrogatories:

To interrogatory 1st, deponent says that he knows the parties to this suit.

To interrogatory 2nd, deponent answers, that he is now an attache of the "Central Bank," and has held that position since February, 1862; has been, and now is an officer of a bank; the defendants did keep an account at the Central Bank during November and December, 1864.

To interrogatory 3rd, deponent says, that he did cash a check for a large amount drawn by defendant, and presented by or for complainants, as it was placed to his credit on the same date, cannot attach the check as defendant's account was, subsequently balanced, and the check taken up. Cashed the check on the 28th day of November, 1864; does not remember the individual who presented the check for payment. Thirty-five thousand dollars was paid on the check, and it was paid in confederate States treasury notes. Has no positive recollection as to the value of confederate money at that time.

To the 4th interrogatory, deponent answers, that the defendants had on deposite confederate States treasury notes at that time: the defendants had none other than confederate States treasury notes on deposit; confederate States treasury notes were the funds then used in the banking transactions. Has already stated the payment was made in conf'd't States treasury notes.

30 Answer of deponent to cross-interrogatories:

To 1st cross-interrogatory, deponent answers, that he held the position of paying and receiving teller in the Central Bank from February, 1862, to the time of the payment of the check spoken of in the direct interrogatories. Does not know whether or not the Central Bank advanced large sums of gold, or other good funds, or money for confederate government securities. Has no knowledge of any advances made by the Central Bank to the State of Alabama Has no knowledge of the value of real estate in Montgomery, and adjacent, at the time mentioned in the interrogatories, and is ignorant of the

comparative value of real estate then and now in the different currencies; believes that the defendants were engaged in carrying on the iron foundry business. Does not know upon what basis transactions on cotton were conducted during the year 1864. Had nothing to do with the cotton transactions of the Central Bank, and cannot answer whether or not cotton, bought by that institution, and by other parties, for confederate treasury notes, has sold for as much or more, since the war, in United States treasury notes. The Central Bank did receive on deposit, and pay out at its counter, prior to, and during the year 1864, confederate State treasury notes; and it was the currency of the State at that time, 1864. Cannot answer at what price cotton could have been bought at Montgomery, or adjacent, in November or October, 1864, with confederate treasury notes. Does not know whether or not real estate, viz: stores and dwelling houses, rent higher at this time, in U. S. treasury notes, than they did at that time in confederate States treasury notes.

Answer of deponent to rebutting interrogatories:

To 2nd rebutting interrogatory deponent says, that he knows nothing of any transactions of the Central Bank in relation to the part of this interrogatory; indeed, he can give no information
31 in answer to any part of the 2nd interrogatory.

To 3rd rebutting interrogatory, deponent answers, that the motive of the Central Bank in receiving on deposit, and paying out at its counter confederate States treasury notes, was, that there was no other currency offered on deposit, and none other consequently to pay out. Deponent does not know what political influences actuated the bank in its transactions. Deponent says that the bank did not nor would not pay out, on the orders of its depositors, notes of its own issue, or coin.

E. M. HASTINGS.

I, E. M. Hastings, do solemnly swear, that the answers I have made to the foregoing interrogatories are true and correct, to the best of my knowledge and belief.

[SEAL.] E. M. HASTINGS.

Subscribed and sworn to before me, October 17th, 1866.

W. R. R. WYATT.

U. S. Com'r for Mid. Div. of Alabama.

Answer of S. Schuesler.

JACK THORINGTON
vs.
JOHN H. HARTLEY, WM. D. SMYTHE.

Answers of Stephen Schuesler to interrogatories propounded to him in the case of Jack Thorington *vs.* John H. Hartley and Wm. D. Smyth, to be used as testimony in the United States district court for

the middle district of Alabama, in the aforesaid case. Taken before W. R. R. Wyatt, acting U. S. commissioner for the district aforesaid, October 18th, 1866.

In chancery.

Direct interrogatories:

To the 1st direct interrogatory, deponent answers, that he does know a lot of ground formerly owned by Jack Thorington,
32 and afterwards claimed by Hartley & Smythe, east of the city of Montgomery. The lot of land spoken of is bounded on the north by the "Mount Meigs road," leading to the city of Montgomery; east by property now owned, or formerly owned by Major Bolling Hall; on the south by property or now belonging to P. D. Sayre, or his estate; on the west by the residence of Judge Stone and a lot being 200 feet east and west, and 300 feet north and south, the owners of which are to him unknown; the lot lies diagonally across the road in a southeast course from the residence of Moses Garrison.

To the 2nd direct interrogatory, deponent answers, that he is unable to answer the first part of this interrogatory, in relation to the value of this property in November, 1864, in the "current money of the United States," for the reason that there was no value of property here at that time, except in confederate money. Has lived at Montgomery for the last 30 years, and is acquainted with the value of real estate in that city. At the time mentioned there was no improvements upon the lot.

To the 3rd direct interrogatory, deponent says, that he does not remember the market value of confederate treasury notes on the 26th and 28th of November, 1864. The currency used about Montgomery, and in central Alabama, at that time, was confederate States treasury notes. They were the sole currency used at that time in general transactions. This portion of Alabama was at that time "in the occupation of the belligerant authorities of the confederate States." The United States authorities exercised no actual control or authority at that time, in this part of Alabama.

Answers to cross-interrogatories:

To 1st cross-interogatory, deponent says, that he has anwered the first part of this cross-interrogatory in his answer to the 2nd direct interrogatory. The whole State of Alabama was, at that time, in a revolutionary condition, politically and financially. The value of all
kinds and species of property was changing from week to
33 week, and from day to day, and there was no standard of value for property; nor was there any other currency used but confederate States treasury notes. There was no U. S. treasury notes in circulation here. A large advance frequently took place in the price of property of different kinds within a day or two, say one hundred to two hundred per cent., speculation pervaded the whole community, and individuals asked whatever they thought proper for any and everything they had to sell. "Greenbacks," whenever

they made their appearance here, were picked up for the purpose of "blockade running," either from Europe or the United States, or from outlying ports off the cost of the United States. Articles bought to this market through the blockade runners were sold at a profit of from 100 to 1,000 per cent. There was a portion of a plank fence around the lot. Does not know whether the value of "greenbacks," or U. S. treasury notes, was or was not effected by blockade running. There was no standard value or regular price for real estate at the time mentioned. Deponent says that prices changed with the fortunes of war. As the prospects grew dark the prices advanced. The last clause in this interrogatory deponent says he cannot answer.

To the 2nd cross-interrogatory, deponent answers, that the belligerent authorities of the United States, viz: "Wilson's raid" occupied the city of Montgomery, on the 12th day of April, 1865, and not until that time. The character and quality of the property under consideration was such, as made it capable of great improvement in its value. It was in the immediate vicinity of some very handsome residences as handsome, perhaps, as in the city. The rents of store houses and dwelling houses are more, or higher now in United States treasury notes, than they were in October and November, of 1864, in confederate States treasury notes; cannot say that they are one hundred per cent. higher. Deponent says, that rents now, over rents in October and November, 1864, have advanced from twenty-five to fifty per cent; rents then in confederate money, rents now in U. S. treasury notes. The latter clause of this interrogatory, deponent cannot answer.

34 Answer to rebutting interrogatory:

To 1st and only rebutting interrogatory, deponent says, that in the month of November, 1864, confederate money was continually going lower, speculation was wild, and every body wished to invest their confederate treasury notes in property of some kind without much, if any regard to price demanded. Deponent does not remember the precise value of flour, bacon, beef, sugar, coffee, tea, wool, osnaburg, &c., but says, the price was in accordance with to the supposed worthlessness of the money.

S. SCHUESSLER.

I, Stephen Schuesler, do solemnly swear, that the answers given by me to the foregoing interrogatories are true and correct, to the best of my knowledge and belief.

S. SCHUESSLER. [SEAL.]

Sworn to and subscribed, before me, on this the 18th day of October, 1866.

W. R. R. WYATT,
U. S. Commissioner for Middle District of Alabama.

JACK THORINGTON,
vs.
JOHN H. HARTLEY & WM. D. SMYTH.

Answers of Moses Garrison, to interrogatories propounded to him in the case of Jack Thorington, *vs.* John H. Hartley & Wm. D.

Smythe, to be used as testimony in the district court of the United States for the middle district of Alabama, in the aforesaid case. Taken before W. R. R. Wyatt, an acting U. S. commissioner for the district before mentioned, on the 20th day of October, A. D. 1866.

In chancery.

Direct interrogatories:

To 1st direct interrogatory, deponent answers, that he knows a lot of ground formerly own by Jack Thorington, and afterwards
35 claimed by Hartley & Smythe, east of the city of Montgomery; bounded on the north, by the Mt. Meigs road, leading into Montgomery; on the east, by lands now owned by Smith & Chapman; on the south, by lands owned by Mrs. J. F. Jackson; on the west, by Judge Stone, and a lot lying on the N. W. corner of the land, and now owned by —— Jones.

To the 2nd interrogatory, deponent answers, that he cannot say, positively, but to the best of his belief, the property spoken of was, on the 26th & 28th of November, 1864, worth about fifteen hundred dollars in United States currency. This is deponent's best judgment. Has lived in and about Montgomery since 1833, and is acquainted with the value of such real estate. It had no improvements upon it, except a confederate fortification around a perscimman tree on top of the hill, and part of an old plank fence.

To the 3rd interrogatory, deponent answers, that he does not remember the value of confederate States treasury notes on the 26th & 28th of November, 1864. Confederate States treasury notes was the currency used in and about Montgomery at that time, in general transactions, and they were the only currency used; this part of Alabama was, at that time, in the occupation of the belligerant authorities of the confederate States, and the authorities of the United States exercised no actual control at that time in this part of Alabama.

Cross-interrogatories:

To the 1st cross-interrogatory, deponent answers, that he predicates his opinion upon the relative value of confederate States treasury notes and gold at that time; from his knowledge of the value of the land, having once owned it, and for what other real estate was offered to him for gold. For instance, a store house on Commerce st., now renting for two thousand dollars, and valued at fifteen thousand dollars in "greenbacks," was offered to depo-
nent, about that time, for two thousand dollars in gold. De-
36 ponent states, that while confederate States treasury notes were the general, and really, the only currency used in the common transactions of business, there were occasional instances where property changed hands upon the basis of gold and "greenbacks." The whole State of Alabama was in a revolutionary condition at that time politically, and prices were fluctuating. Could tell the real value, or about the real value of property at that time in United

States currency. Have answered all questions contained in the foregoing interrogatories of my own knowledge. Deponent says that all species of property advanced about that time to an extraordinary degree, in confederate money. To what per cent. they advanced deponent cannot say. Speculation was rife in confederate money; greenbacks were, (as a general thing,) when they arrived here, picked up for blockade running speculations, and for leaving the country; does not know what per cent. blockade runners made on articles imported into this country; there was a portion of an old plank fence around the property; thinks that the value of U. S. treasury notes, commonly called greenbacks, was as much affected by persons buying them up, to place their funds in Europe and elsewhere, as by blockade running; there was no standard value, in the opinion of deponent, or regularity of price for real estate at the time mentioned. Does not know the motive of parties in buying and selling property at that time, further than the general motive which usually actuates men in buying and selling.

To 2nd cross-interrogatory, deponent says, that it was in April, 1865, that Wilson's raid occupied Montgomery, and not until then. Does not look upon the property as being of such description and locality as to greatly improve in character and value. There are some very good residences opposite to and its vicinity. Stores and dwelling houses in Montgomery are renting higher now for U. S. treasury notes than they did in October & November, 1864, in confederate currency; deponent cannot state particular per cent. stores and dwellings have advanced since the war, nor can he state
37 to what per cent. all species of property have advanced in U. S. treasury notes over confederate money. The latter part of this interrogatory deponent deems he has answered.

Rebutting testimony:

To this interrogatory, deponent says, that in November, 1864, confederate money was constantly diminishing in value. Believes that as a general thing, holders of confederate money were anxious to invest it. Deponent says, he does not remember the current value of flour, bacon, beef, sugar, coffee, &c., &c., &c., at that time in Montgomery, but says that he paid in Augusta, in December of the same year, $15 00 per yard for prints, & other articles in proportion, and here, in Montgomery, at that time, prints retailed at $20 and upwards, and in Selma, at $30 per yard.

M. W. GARRISON.

I, Moses Garrison, do solemnly swear that the answers which I have given to the foregoing direct, cross, and rebutting interrogatories, are true and correct to the best of my knowledge & belief.

M. W. GARRISON.

Sworn to and subscribed before me, this the 20th of October, A. D. 1866.

W. R. R. WYATT,
U. S. Com'r for Middle Dist. of Alabama.

JACK THORINGTON
vs.
JOHN H. HARTLEY AND WM. D. SMYTH.

Answers of Pelham J. Anderson to interrogatories propounded to him in the case of Jack Thornington *vs.* John H. Hartley & Wm. D. Smyth, to be used as testimony in the United States district court for the middle district of Alabama. Taken before W. R. R. Wyatt, acting U. S. commissioner for middle district of Alabama, on the 23d day of October, A. D. 1866.

In chancery.

38 To the 1st direct interrogatory, deponent says, that he cannot say that he knew the land, and is certain that he cannot describe its boundaries.

To the 2d interrogatory, deponent answers, that he cannot state the value of the land in current money of the United States on the 26th & 28th of November, 1864. Has no judgment on this subject. Has lived in Montgomery some seven years. Does not know the value of such property, because he does not know the property spoken of sufficiently well to give an opinion. Does not know anything concerning the improvements, if any, upon the land.

To 3d interrogatory, deponent answers, that he does not remember the market value of treasury notes of the confederate States on the 26th & 28th of November, 1864. Confederate States treasury notes was the currency used in this portion of Alabama at that time. They were the sole currency used in general transactions. This part of Alabama, at the time spoken of, was in the occupation of the belligerent authorities of the confederate States, and the United States authorities exercised no actual control here at that time.

Answer to cross-interrogatories:

To 1st cross-interrogatory, deponent answers, that the first part of this interrogatory needs no answer, as he has not stated the value of the land in question, in the currency of the United States. Deponent answers the second part of this interrogatory, generally, by stating that the country and the currency was, at the time, in a disorganized condition. Speculation was rife, and prices were advancing continually. By what rule, or ratio, or standard, they advanced, he does not know, whether one hundred or five hundred per cent. in a given time. Does not know whether "greenbacks" on their appearance here were, or were not, picked up for blockade running, &
39 does not know at what advance articles reaching this country through blockade runners were sold. Does not know whether there was, or whether there was not, a plank fence around the property at the time mentioned. Does not know whether the value of "greenbacks" was, or was not affected by blockade running; there was no standard value at the time mentioned for real estate, & price

varied recording to circumstances; suppose that in trade of thirty or forty thousand dollars, there was frequently a difference of from 25 to 50 per cent. in the amount for which different property was sold; such trades, at the time aforesaid, were regulated by the want of money on the part of the seller, and the desire to invest on the part of the buyer, & by other circumstances.

To 2d cross-interrogatory, deponent says, that it was in April, 1865, that Wilson's raid occupied Montgomery, and not until that time. Stores rent for more in U. S. treasury notes than they did in October & November, 1864, for treasury notes of the conf'd't States; thinks that stores are reniing at an advance of 50 per cent. over prices obtained for them in the fall of 1864. Does not know how much higher dwelling-houses are renting now than then, if any. All kinds of rented property are not higher by one hundred per cent. in U. S. currency than they were in October & November, 1864, in confederate money. Cannot answer the last clause of this interrogatory.

Answer to rebutting interrogatory:

To this interrogatory, deponent says, that in October & November, 1864, holders of confederate money were very solicitous to invest, & would buy any species of property that had a real value. The currency was daily depreciating. Deponent does not know the then current rates in confederate money of the articles mentioned in the interrogatories, and cannot state the *the* difference then, & the price before the war for these articles. Does know that these articles were higher in November, 1864, than they were before or since the war.

PELHAM J. ANDERSON.

I, Pelham J. Anderson, do solemnly swear that the answers I have given to the foregoing interrogatories are correct and true, to the best of my knowledge and belief.

PELHAM J. ANDERSON.

Subscribed and sworn to before me, on this the 23d day of October, A. D. 1866.

W. R. R. WYATT,
U. S. Commissioner for Middle District of Alabama.

I, W. R. R. Wyatt, acting United States commissioner for the middle district of Alabama, not being of counsel or attorney for either of the parties in this suit, & no manner interested in the event of this cause, do certify that the foregoing evidence of M. A. Chisholm, Stephen Schuessler, Pelham J. Anderson, M. W. Garrison, & E. M. Hastings, was reduced to writing by myself; that the parties were duly sworn & cautioned to speak the truth, & that the answers, after being duly sealed, and directed to the clerk of the court aforesaid, was delivered with my own hand to said clerk, Oct. 25th, 1866.

W. R. R. WYATT,
U. S. Commissioner.

41 U. S. district court in the chancery side of the docket.

JACK THORINGTON
vs.
JOHN H. HARTLEY, WILLIAM D. SMYTHE.

Interrogatories to be propounded to George P. Keyes, a material witness for the complainant in the above-entitled cause, and to be used on the trial of said cause.

1st. Are you acquainted with the said parties?

2d. Were you, or were you not, acquainted with a certain tract of land, east of Montgomery, opposite the residence of Moses Garrison, owned by the complainant, and subsequently sold to the defendants? If you answer affirmatively, then please state if you were acquainted with its value at, or previous to the war, in the part of the confederate States, and when the currency was on a specie basis, and state what it was at such time.

3d. State whether or not you were acquainted with the value of real estate in that locality at such time, and your means of knowing the same, and whether you were authorized and requested by said complainant to sell said tract of land about that time and the price at which it was held.

CHILTON & THORINGTON,
Sols. for Compl't.

We hereby consent that the examination of the witness may take place before Robert Wyatt, United States district court commissioner, waiving affidavit, &c., and ten days' notice, &c.

STONE, CLOPTON & CLANTON,
Def'ts' Sols.

(Defendants object to all proof of the price asked by complainant for said lands, as illegal and irrelevant.)

They propound cross-interrogatories:

42 1st x. If you state any price for said lands which the complainant instructed and authorized you to ask, state if the price so fixed on said lands was not for the whole tract—all lying east of Geo. W. Stone's residence, and including the lot 200 feet east & west by 300 feet north and south, in the northwest corner of said tract since sold by compl't to one Jones?

2d x. How much land was said tract represented to contain? Was it not near or quite 11 acres? If the tract be in fact less than 7 acres, what reduction in price will this effect? What discount in price would you make if a lot 200 feet east & west by 300 feet north & south be taken from the northwest corner of said tract?

3d x. How long did you keep said lands in market at the price you have stated, or at any other and what price? When was this? Did you effect a sale of said lands? If you did not, was this because either you or the complainant did not wish to sell? Were you not

to receive commissions, if you sold, and were you not anxious to make sale?

4th x. What was the market value of confederate treasury notes about 26th and 28th November, 1864? Were they not nearly worthless as a purchasing medium? Were they worth more than one for 30? one for 25? one for 20? What was their value?

5th x. What would said lands bring now in good money? Can you say they ever would have brought $3,000 in good money? If so, how do you know? Were they not difficult to sell?

STONE, CLOPTON & CLANTON,
Sols. for Defts.

43 U. S. district court on the chancery side of the docket.

JACK THORINGTON
vs.
JOHN H. HARTLEY, WILLIAM D. SMYTH.

George P. Keyes, witness for complainant, says, in answer to the 1st int'y, I know the complainant. I know ueither of the defendants.

2d int'y. I am acquainted with the tract of land alluded to in this int'y, but know nothing of its sale to def'ts. I have some opinion as to its value per acre at the time mentioned in this int'y. I put it at from $1,000 to $1,500 per acre.

3d int'y. I have some acquaintance as to the value of real estate in that locality at that time. I resided in that neighborhood, and had purchased several lots in that part of the city. I was requested, or rather authorized, by complainant about that time, to sell said tract of land. The price at which it was held was $20,000.

1st x. int'y. According to my recollection this was the price for the entire tract, consisting of about 10 acres. The lot mentioned may not have been included, but if it were not so included, I have no recollection of the fact.

2d x. int'y. My recollection is that the tract was represented to contain about 10 acres; it may have been a little more or little less. If, in fact, it was only 7 acres it was still, in my opinion, worth, at that time, from $1,000 to $1,500 per acre. I would make a discount in price, on account of said lot of about $1,800.

44 3d x. int'y. I do not remember how long I had said land in market at said price, but it was not long—I think only a few days. It was a year or so before the war. I don't remember the time exactly. I did not sell, but it was not for the lack of a wish to sell on the part of complainant or myself, but because I failed to get the price asked. I was to be paid for selling, and would have been greatly pleased if I could have got the price asked, but I do not remember having any anxiety about the matter.

4th x. int'y. I cannot state, except upon hearsay, the market value of confederate treasury notes at the time mentioned in this int'y. I know they were greatly depressed in value.

5th int'y. I cannot say what said lands would sell for now in good money. I do not "know" that said lands would ever have brought $3,000 in good money. My opinion is they would readily have brought that amount, if they had been put in the market at such a price. My opinion is based on the prices I paid for some lots, purchased by me in that direction, both at public and private sale, in connection with what I heard others say in regard to the value of real estate in the city. I do not know whether said lands were difficult to sell or not as I had nothing to do with the sale of them, and know nothing about it.

G. P. KEYES.

I, W. R. R. Wyatt, commissioner for the middle district of Alabama, not being of counsel or attorney for either of the parties,
45 or in any manner interested in the event of the cause, do further certify that the foregoing evidence of G. P. Keyes, witness for the complainant in this case, was sworn to before me, as his just, lawful and truthful evidence, and the paper or papers so sworn to has this day been sealed and signed by myself and directed to the clerk of the United States district court for the middle district of Alabama, and by my own hand delivered to the said clerk.

Witness my hand and seal this 15th day of November, 1866.

W. R. R. WYATT,
U. S. Commissioner Middle District of Ala.

Order.

DEC. 20, '66.

Ordered to publish testimony in this case, and by consent of counsel for complainant and def'ts, case to be submitted on bill and answer, and proof and argument of counsel of complainant and def'ts to be furnished court within a week in writing.

Decree.

In the district court of the United States, for the middle district of Alabama.—In chancery.

JACK THORINGTON
vs.
JOHN H. HARTLEY and WILLIAM D. SMYTH.

This cause coming on for hearing, was submitted to the court on the bill and answer, and the exhibits and proofs, with the arguments of counsel; and the court, after due deliberation had thereon, being of the opinion that the complainant has not established his case for the relief prayed for:

46 It is ordered, adjudged, and decreed, that the complainant's bill be dismissed with costs, but without prejudice.

Dated January 10, 1867.

RICHARD BUSTEED, *Judge.*

Petition and allowance of appeal.

District court of the United States, for the middle district of the State of Alabama, sitting in equity.

JACK THORINGTON, complainant,
vs.
WILLIAM B. SMYTH & JOHN H. HARTLEY, defendants.

The above-named complainant, Jack Thorington, conceiving himself aggrieved by the final decree entered on the 10th day of January, 1867, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States; and he prays that his appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

JACK THORINGTON.

Dated this 19th day of January, 1867.

W. P. CHILTON,
Sol'r for Compl't.

Upon considering the above petition of appeal, it is ordered that said appeal be, and is hereby allowed.
Jan'y 19th, 1867.

RICHARD BUSTEED,
Judge District Court of U. States for the Middle Dis't, Ala.

Filed in office January 19th, 1867.
E. C. V. BLAKE, *Clerk.*

47 *Appeal bond.*

Know all men by these presents, that we, Jack Thorington, and William P. Chilton, and William P. Chilton, jr., are held and firmly bound unto William B. Smythe and John H. Hartley, in the sum of two hundred and fifty dollars, to be paid unto the said William B. Smythe and John H. Hartley, their executors, administrators, and assigns, to which payment, well and truly be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally firmly by these presents.

Dated this the 19th day of January, in the year of our Lord, 1867.

Whereas, the above-bounden Jack Thorington has appealed to the next term of the Supreme Court of the United States, from a decree of the district court of the United States for the middle district of Alabama, bearing date the 10th day of January, 1867, in a cause in equity, in which Jack Thorington was complainant, and the said William B. Smyth and John H. Hartley, were defendants. Now, therefore, the condition of this obligation is such, that if the above-named

appellant, Jack Thorington, shall prosecute his appeal with effect, and pay all such costs and expenses as shall be awarded against him as such appellant therein, then this obligation to be void, otherwise to remain in full force and effect.

JACK THORINGTON. [SEAL.]
WILLIAM P. CHILTON. [SEAL.]
WM. P. CHILTON. [SEAL.]

Sealed and delivered in my presence, and approved by me, this 19th day of January, 1867.

Endorsed on back of bond: "Approved, Richard Busteed, U. S. dist. judge."

Filed in office, January 19th, 1867.
E. C. V. BLAKE, *Clerk.*

48 *Citation of appeal.*

United States of America to William B. Smyth and John H. Hartley, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the next term thereof, pursuant to an appeal from a decree of the district court of the United States for the middle district of Alabama, exercising circuit court powers in equity, wherein Jack Thorington is appellant, and you are appellees, to show cause, if any there be, why the said decree should not be corrected and speedy justice be done to the parties in that behalf.

Witness, Hon'bl Richard Busteed, judge of the district court of the United States for the middle district of Alabama, on this the 19th day of January, 1867.

RICHARD BUSTEED,
Judge District Court of U. States for Middle Dis't, Ala.
E. C. V. BLAKE, *Clerk.*

Filed in office, January 19th, 1867,
E. C. V. BLAKE, *Clerk.*

[SEAL.]

Marshal's return on citation.

Received Jan. 19th, 1867. Executed by serving notice on Stone, Clopton & Clanton, their solicitors.
Jan. 19, 1867.

JOHN HARDY,
U. S. Marshal.
Per L. J. BRYAN, *Deputy.*

49 District court of the United States for the middle district of the State of Alabama, said court exercising circuit court powers as a court of equity.

I, E. C. V. Blake, clerk of the said district court of the United States, holden at Montgomery, in the State of Alabama, do hereby certify that the foregoing pages, numbered from one to forty-eight, inclusive, contain a true and perfect transcript of the record of the proceedings had in a cause lately pending on the equity side of said district court, wherein Jack Thorington is complainant, and William B. Smythe and John H. Hartley are defendants; as also the prayer for and the order of the judge of said court granting an appeal in said cause to the Supreme Court of the United States, and a true copy of the bond given by said complainant, and approved by the said judge—all which I do hereby certify to the said Supreme Court.

Given under my hand and the seal of the said district court, this the 12th day of August, 1867, and of the independence of the United States the ninety-first.

Attest:

[SEAL.] E. C. V. BLAKE,

Clerk United States Court for the Middle District of Alabama.

Supreme Court of the United States.

DECEMBER TERM, 1868.

JACK THORINGTON,

vs.

WILLIAM B. SMYTH AND JOHN H. HARTLEY.

1. It is a principle of equity law, too well established to be now controverted, that a vendor, who has taken no other security for the purchase money, retains a lien for it on the land as against the vendee or his heirs.

Bayley *vs.* Greenleaf, 7 Wheaton's Rep., 46.

In Chilton *vs.* Braiden's administratrix, (2 Black's Rep., 458,) Mr. Justice Grier, delivering the opinion of the Court, says: "When one person has got the estate of another, he ought not, in conscience, to be allowed to keep it without paying the consideration. It is upon this principle that courts of equity proceed as between vendor and vendee. The purchase money is treated as a lien on the land sold where the vendor has taken no separate security."

In the case before the Court, as in the case from which I have made the above quotation, the lien is wholly unembarrassed by any subsequent sale made by the vendees, or any lien of creditors. The question of lien is simply between the vendor, Thorington, and Smyth & Hartley, his vendees; and in addition to the lien which the vendor has for the balance of the purchase money, the note given by the vendees in this case, which is made an exhibit to the bill, and is

admitted by their answer, expressly provides that it shall constitute a lien on the land. The note reads as follows:

"$10,000. MONTGOMERY, *Nov. 28th*, 1864.

"One day after date, we, or either of us, promise to pay Jack Thorington, or bearer, ten thousand dollars, for value received in real estate, sold and delivered by said Thorington to us this day, as per his deed to us of this date; this note, part of the same transaction, is hereby declared as a lien or mortgage on said real estate situate and adjoining the city of Montgomery.

"(Signed) W. D. SMYTH,

"(Int. rev. stamp, 85.) J. H. HARTLEY."

The court will observe that the bill of complaint is in the usual form;. that no objection was taken to it; that the answer of the defendants "admits the truth of every material allegation contained in it," superadding, however, that it was understood and agreed that the payment should be made in what was known as Confederate States Treasury notes.

Speaking from *the writing* which the parties agreed upon and signed as the evidence or memorial of their contract, in the absence of fraud or imposition or mistake, (for it is not pretended by the defendants in their answer that anything of this kind existed,) we have the simple case of a sale of real estate, the conveyance by the vendor, and the execution and delivery by the vendees of their note for the unpaid purchase money, acknowledging the existence of a lien on the land for its payment. There is no offer on the part of the defendants to rescind the contract, but they seek to keep the land under our deed which they hold, and refuse to pay what they have promised. It is submitted that this is clearly against natural equity, as it is certainly in the face of their contract.

Chapman *vs.* Tanner, 1 Ver., 268, and notes.

Blackburn *vs.* Gregson, 1 Bro. Ch. Cases, 424, and n. a., where the learned annotator says "the existence of this species of lien against the vendee, &c., is now universally acknowledged; the principle of it originates in trust; the vendee, in respect to the unpaid consideration, or of so much of it as remains unpaid, being considered as a trustee for the vendor."

2 Story's Eq. Juris., § 1217.

4 Kent's Com., 151 to 154, (3d ed.)

2. The equity being established, is there anything in the case, insisted on by way of defence, which shows the complainant is not entitled to recover? The substance of the defence set up in the answer is, that at the time of making the contract for the sale of the land set out in the bill, all the parties resided in Montgomery, Alabama, where the contract was made; that at the time of the purchase, (Nov., 1864,) the land sold the defendants did not exceed in value the sum of three thousand dollars "in lawful current money;" that at said time there was in fact no lawful money or currency in circulation in the State of Alabama, the authority of the United States having been destroyed or overthrown in all that part of the State, and that the only currency in circulation at the time was the treasury notes of the so-called Confederate States of America; "that said contract was made with the understanding and agreement that the same should be discharged in Confederate treasury notes, and not in money current or lawful by the laws of the United States;" that said notes had at that time a nominal value, and were not, when the contract was made in Montgomery, worth more than one dollar in money for twenty-five in such currency; "that although said contract purports on its face to be for the sum of $45,000, which the papers and the pleadings in the cause show to have been made," no such contract was in fact made; that the $35,000 were paid in Confederate States treasury notes, and not in money.

The court will perceive that there is no averment in the answer that the contract was unlawful, or that it was made to aid in anywise the rebellion, or that there was any fraud or mistake in the making or execution of the writings, which the parties entered into as evidence of it.

It is submitted on behalf of the complainant, that as the pleadings now stand, the defendants could not be permitted to introduce new terms into the written contract by parol proof. In other words, where the *written contract* is for the payment of *money*, it is not competent, in the absence of averments of fraud, mistake, &c., to make proof by parol that the writing does not speak the truth, and that the note is payable in something other than money. It will be shown by the record that the complainant duly objected to all the proof which attempted to explain away the writing, or to interpolate, by parol, provisions in it which would change its legal effect.

It is a general rule that parol evidence is not admissible to supply,

contradict, enlarge, or vary the words of a written contract; and it is equally well settled that when a contract is reduced to writing, all matters of negotiation and discussion antecedent to and *de hors* the writing are excluded as being merged in the instrument.

Nash *vs.* Town, 5 Wallace, 689–703.

Citing—

2 Kent's Com., 11 ed., 746.

1 Greenleaf's Ev., 12 ed., § 275, p. 312.

This principle has frequently been decided by this court. I will cite a few cases which will serve to illustrate it.

Parol evidence cannot be received to show that the real value of the subject insured, in a valued policy, is different from that stated in the policy.

Marine Ins. Co. of Alexra. *vs.* Hodgson, 6 Cranch, 206.

So, parol evidence of a local custom is not admissible to affect the construction of a contract, the instrument being unambiguous on its face.

Oelricks *vs.* Ford, 23 Howard, 49; *Ib.*, 420.

So, when a bill of exchange is drawn in proper form and protested for non-acceptance, parol evidence of an understanding between the drawer and payee, calculated to vary its terms, is inadmissible.

Brown *vs.* Wiley, 20 How., 442.

So, if deeds under which the parties claim title, refer to a recorded plat, evidence that this differed from the original plat is not admissible.

Jones *vs.* Johnson, 18 How., 150.

See, also, Smith *vs.* Burnham, 3 Sum., 435.

Lee *vs.* Luther, 3 Wood. and M., 519.

Goodrich *vs.* Norris, 1 Abbot's Rep., 196.

These cases, I think, will suffice to show that the parol proof that this note should be, or was to be, paid in Confederate States paper, the note calling for money, should have been rejected, as opposed to the rule which forbids that written instruments should be varied by parol.

3. But if such proofs were admissible, in the absence of any allegation of fraud or mistake, then I insist that the proof does not show

that this note was to be paid in the so-called Confederate States Treasury notes.

The court will observe the answer of the defendants is not on oath, and that it admits the contract as set up by the bill, but then attempts to avoid it by averring that the consideration for the land was to be paid in Confederate Treasury notes. The rule is, that the admission is good against the defendants, but they must prove the matter set up in avoidance.

Clements *vs.* Moore, 6 Wallace, 299.

They attempt to make this proof by only one witness, M. S. Chisolm; but it will be seen, by an examination of his testimony, he was not present when the contract was *consummated*, which was done by the plaintiff in person. (See page 18 of printed record.) He, however, states that the note for $10,000 sued upon was given in his presence without objection or complaint. He describes the note as one payable *thirty days after date in Confederate States Treasury notes*, whereas the note is payable "*one day* after date" and *in money*, and not Confederate Treasury notes. So that this is not the note of which the witness *speaks*, and his testimony *fails* to establish the defence and to overturn the writing. It is submitted, with much confidence, that if such parol proof can be allowed to vary and destroy the legal effect of written instruments, there would be but little security for the rights of parties. There is a class of cases where parol proof is admitted—for example, to show that a deed, absolute on its face, was intended by the parties to operate as a mortgage; but in such cases, the courts that have admitted it, require the most full and indisputable evidence.

Bryant & McPhail *vs.* Cowart, 21 Ala. R., 92.

But this is admissible only in cases where the matter is directly put in issue.

"The rule is inflexible (in Alabama) that parol evidence cannot be received to add another term to a written instrument perfect and complete in itself, or to change its legal effect."

West & West *vs.* Kelley's ex'rs, 19 Ala. R., 353; 18 *Ib.*, 801; 21 *Ib.*, 797; 22 *Ib.*, 233.

In this case, Mr. Chisolm is the *only witness* who is examined with

reference to the *execution* or character of the contract, and we think it is manifest that his proof, which relates to another and different note—a note payable "thirty days after date in Confederate States Treasury notes"—cannot be allowed to destroy or set aside the *written* evidence of the *real* agreement of the parties to pay "one day after date in money."

No allusion is made in the pleadings to (and the court by its decree ignores) an ordinance passed by a convention called together under the provisional government of 1865, which substantially ordains "that in all suits upon contracts made between the 1st September, 1861, and the 1st May, 1865, parol evidence may be admissible to prove what was the consideration thereof, and whether or not the parties thereto understood or agreed that the same should be discharged by a payment in Confederate currency or Treasury notes; and if so, or it appears so from the contract, then to show what was the real or true value of the consideration of the contract, and what amount the plaintiff is legally, justly, and equitably entitled to receive according to the contract by the judgment of the said court." (See sec. 3 of ordinance No. 26, adopted 28th September, 1865.) If this ordinance be valid and of any force and effect, as the second section of it validates this and all such contracts, it is clear that the court below erred in dismissing the bill, but should have ascertained the value of the land, if it was shown that it was "understood or agreed" that it should be paid in Confederate currency, and should have given the complainant a decree for a *pro rata* amount on the balance due. The court, as I have said, ignored this ordinance of said convention, whether upon the ground, as assumed by some, that it was not competent for President Johnson to authorize it to be held, and that it had, consequently, no authority to make laws binding upon the people, or upon the ground, as assumed by others, that being legal, this ordinance was violative of that provision of the Federal Constitution which denies to the States the power to pass any law impairing the obligation of contracts, I am not prepared to say. Neither am I disposed at this time to argue these questions, for whether the ordinance be valid or invalid, *quacunque via data*, the decision of this case is wrong. If the ordinance be valid, we would be entitled to a decree under it. If it be invalid, then there is no rule of law or equity, as has been be-

fore shown, that would justify the court in admitting the parol proof to add terms to the written contract.

4. But suppose the court should rule against the views above expressed, even then his honor erred in dismissing the bill. If we were not entitled to the $10,000 and interest, we were entitled to what would have been, under all the circumstances, a fair and just compensation for our land. The proof shows that it was sold for about double its value before the war. This would have entitled us, upon the defendants' theory, to $5,000 and interest. Yet we are turned out of court without anything *but the cost upon us*, and the defendants keep our land! If the court had arrived at the conclusion that we should not recover the *entire* amount we claimed, why not have ordered a reference to the master, to ascertain the value of the land at the time of the sale, and hence given us 10-45ths of that value with interest? This would have been entirely regular, if the parties' contract as to the amount to be paid was not allowed to stand. This, under the prayer for general relief, the court might well have granted.

The notes which the defendants aver this debt was to have been paid in, were of some value at the time of the negotiation, and when it fell due, to wit, in November, 1864. They did not pay, or offer to pay it at any time, even in the notes of the so-called Confederate States. These notes, at the time, had a purchasing power of about two for one. Can the defendants be permitted, in a court of conscience, to take advantage of their own wrong—refuse to pay when the note was due, and ever since, and hold on to the land? We think not. They should return the land to us, or pay for it.

W. P. CHILTON,
Attorney for Appellant.

American Law Register
4. New Series — 339.

In the Supreme Court of the United States.

JACK THORINGTON

vs.

SMITH & HARTLEY.

BRIEF ON REARGUMENT.

The appellant filed his bill in chancery to enforce his lien for the unpaid portion of a sale of real estate situate near the city of Montgomery, State of Alabama, as evidenced by the following note:

"MONTGOMERY, *Nov.* 28, 1864.

"$10,000.

"One day after date, we, or either of us, promise to pay Jack Thorington, or bearer, ten thousand dollars, for value received in real estate sold and delivered by said Thorington to us this day, as per his deed to us of this date. This note, part of the same transaction, is hereby declared as a lien or mortgage on said real estate, situate and adjoining the city of Montgomery.

[Int. rev. stamp, $5.]

"W. D. SMITH,
"J. H. HARTLEY."

The answer sets up as a defence "that when said contract was made there was in fact no lawful currency in circulation within the State of Alabama; that the circulating medium at that time was the Treasury notes of the so-called Confederate States; and that the contract was made with the *understanding and agreement* that *the same*

should be discharged IN *Confederate Treasury notes*, and not in money lawful or current by the laws of the United States."

The evidence offered, to prove by parol a contemporaneous agreement to receive these treasury notes, is to be found in the deposition of Chisolm, who was the plaintiff's agent in making the sale of the land. He describes the note, which by the understanding was to be thus paid, as payable in "*thirty days.*" The note in suit is payable one day after date. (Rec., p. 18.)

But assume that the evidence applied to this note, the question then is, was such evidence admissible for this purpose?

The rule is well established that parol evidence of an oral agreement alleged to have been made at the time of the drawing, making, or indorsing of a bill or note, cannot be permitted to vary, qualify, contradict, add to, or substract from the absolute terms of a written contract.

The only exceptions to this rule are cases of fraud, illegality, or want of consideration.

In all these cases of alleged contemporaneous agreements, it may be asked why the verbal condition, if bargained for, was not put in writing also? If the rest of the agreement was sufficiently important to authorize written evidence of its execution, why except the remainder? The obvious inference must be, that all that the parties did in fact agree to was put in due written form, and that all collaterals and appendages concerning which there was mere conversation was precisely what they could not agree upon. This, of course, is not always the true inference, but *it is of necessity the legal inference.* (2 Parsons, N. & B., 501.)

The note on its face is clear and distinct. The promise to pay "ten thousand dollars" has a well-understood, well-defined meaning. Whether made in Massachusetts or Alabama the rules applicable to its construction are the

same. The precise issue presented by the answer is, that this contract did not represent the truth; that, in point of fact, the agreement was for a payment in an *illegal currency* of a mere nominal value. It is difficult to conceive of a more palpable contradiction of the legal effect of a contract than the admission of evidence to sustain this defence.

In the case of Baugh *vs.* Ramsey judgment was recovered on a note for the payment of "one hundred dollars." A bill in equity was filed, alleging the true agreement to be, that the $100 was to be paid in the bills of the Commonwealth. There was a decree for the complainant on the evidence, but the Court of Appeals reversed it, holding that there was no latent ambiguity in the note, and that the meaning of the word "dollars" could not be altered by parol evidence, in adding the qualifying clause "in Commonwealth paper." (4 T. B. Mon., 155.)

In Pack *vs.* Thomas a check was given on the Bank "to pay Wm. Pack, or bearer, thirteen hundred and thirty-five dollars." Thomas offered evidence to prove that he had no other funds in the Bank than Brandon money, and that it was distinctly agreed by the payee at the time that he would receive this. This defence was overruled, and judgment rendered for the amount of the note. (13 Sme. & M., 11.)

In Williams *vs.* Beazeley, a vendee of land offered his note for "one thousand dollars, payable in the notes of the Bank of the Commonwealth." The vendor refused to take it with this qualification, and the note was drawn without it. But on the trial it was offered to be proved that this alteration in the note was made on the assurance and agreement of the vendor that he would receive the bank money in payment. The Court decided, as there was no mistake in the drawing of the note, and the evidence did not prove a fraud, there was no ground for the

admission of parol evidence to contradict the legal import of the note. (3 I. I. Mar., 577.)

In Morton *vs.* Wells, on a note for "three hundred dollars," it was held that though the bills of the United States could not be lawfully tendered in payment, yet that, as in fact they *passed current at par with gold and silver*, the Court held that evidence as to an agreement to receive them was a rational explanation of the contract. (1 Tyler, 383.)

This question, as applicable to the condition of things set up in the answer, was fully considered in the case of Roane *vs.* Green, the Court holding that it was not competent to prove by parol, on such a note, that Confederate treasury notes was the payment agreed on. (24 Ark., 212.)

On the like principle, a note payable for "four hundred dollars in *current funds*," it was held that these words had a well-defined meaning, and entitled the party to coin or its equivalent, and that no parol evidence was admissible to change that meaning.

Galena Company *vs.* Kupfer, 28 Ill., 334.

Marine Company *vs.* Tincker, 30 Ill., 402.

In the case of Morris *vs.* Edwards, very elaborately argued and maturely considered, the note was "to pay (in current bank notes of the city of Cincinnati) two thousand dollars, for value received." Evidence was offered to show that business was at this time done in Cincinnati on a depreciated currency, consisting of the notes of the banks of Cincinnati and its vicinity; that property was estimated by the value of these notes; that the difference in value, as compared to specie, was $33\frac{1}{3}$; and that at the time the note became due there was no depreciated bank paper in circulation at Cincinnati, nothing being current but specie, or bank notes of specie value. This evidence was offered to show that the recovery of the plaintiff should be lim-

ited to two-thirds of the sum stated in the note, with interest.

This evidence was rejected, because, if received, it would not explain the contract, but contradict it. (1 Ohio, 189.)

There are cases where the general sense of words has been modified by *evidence of local usage in particular trades*, out of which the contract arose.

Such was the case of Smith *vs.* Wilson, in which it was permitted to show that in the rabbit trade "one thousand rabbits" meant one hundred dozen. (3 B. & Ad., 728.)

So, in Goblet *vs.* Beechy, evidence was admitted to show that the word "mod," used in a sculptor's will, was among sculptors used as an abbreviation for "models." (3 Sims, 24.)

In this latter case the word "mod" had no signification whatever, but the ruling in the prior case is very questionable. Judge Bronson says, in referring to it, "I should feel great difficulty in subscribing to this case. It is difficult to deny that it was a plain contradiction of the express contract. (Hinton *vs.* Locke, 5 Hill, 438.)

The rule is very clearly applied in the case of Smith *vs.* Jeffries, on a contract to sell "600 tons of *ware* potatoes." The evidence showed there were three kinds of potatoes—wares, middlings, and chats," the first being the largest and best. The plaintiff was permitted to prove that in fact he had contracted for the best quality of a particular kind, viz: "*regent's* wares." The defendant had offered to deliver an inferior kind, viz: "*kidney wares.*" Under Lord Denman's instructions a verdict was rendered for the plaintiff.

On a rule for new trial, it was held by the judges unanimously that the evidence was inadmissible, and a new trial was granted. (15 M. and W., 561.)

There is a distinction, then, to be drawn between parol evidence to establish a meaning of word by the custom

and usage of a certain trade or business, and parol evidence to show an understanding or agreement between the parties differing from that which is expressed in the writing.

This is illustrated in the case of Thompson *vs.* Sloan. Sloan made his note at Buffalo for $2,500, payable in Buffalo "*in Canada money.*" In an action brought by the indorsee, when the note was offered in evidence, it was objected that being payable in "Canada money," it was not negotiable—that Canada money meant bills of the *Canada banks.* The *plaintiff*, to meet this difficulty, offered to prove the understanding of the parties by showing that at the time of the making of the note, Sloan desired to have it drawn payable in Canada Bank bills, but this was objected to, and the note drawn as it now appears. This evidence was rejected; but, on the other hand, the *defendant*, was allowed to prove that, by the *custom of trade*, in Buffalo, "Canada money" meant Canada Bank bills. Upon this there was a nonsuit.

The question being carried to the Supreme Court for a new trial, it was held that the evidence offered by the plaintiff was properly rejected, "because it was direct independent evidence of intention, as explained by the parties at the very time of drawing the note. Everything which the parties declared, was merged by the written instrument."

The Court having thus disposed of the plaintiffs offer, adverts to the evidence introduced by defendant, and says: "The cases are quite numerous that though the meaning of a word be perfectly well settled in general language, yet, if a secondary meaning has been affixed to it in commercial usage in a certain region of the country, or among certain classes of men, this may be shown; and when the proof is clear, the use of that word in that region or among those men, carries into the contract the signification thus established." The motion to set aside the nonsuit was therefore denied. (23 Wend., 71.)

This is also shown in the case of Goblet *vs.* Beechey, where evidence from sculptors was admitted as to the meaning of the word "Mod," but the declaration of the testator as to his intention was rejected.

It is to be remarked, in this connection, that the Treasury notes issued by the Confederate Government were never made a legal tender in payment of debts, either private or public. Notwithstanding the great pressure under which they acted, and the rapid depreciation of these notes, they held that, under the power to "coin money," they were forbidden to force anything as money upon the people which the Constitution did not authorize them to coin.

We conclude, therefore, that as there was no evidence offered to show that by custom and usage "dollars" meant Confederate Treasury notes, the Court erred in arriving at this conclusion by admitting evidence of a contemporaneous parol agreement.

But, assuming that the evidence was properly admitted, it then proved that the defendant was authorized to pay this sum *in* Confederate notes when the note was payable, which, including the days of grace, would be the 2d December, 1864. The notes were not then, nor have been since, tendered.

What is the measure of damage in such a case?

The decisions are very conflicting, and we are not ignorant of the case of Thompson *vs.* Riggs, in 5 Wall., which refers to the decision of Robinson *vs.* Noble, 8 Pet., which holds that the value of the money at the time the note was payable, is the criterion.

We submit that the peculiar circumstances of this case take it out of the rule thus announced. The value of gold, as marked by these Treasury notes, fluctuated daily and hourly, and was different in different localities of the State. While it was 20, 30, or 40 to one, these Treasury notes

had an exchangeable power of two, three, or four to one in the different species of property. It may well be that the vendor should have agreed that if the note was paid at maturity, it might be extinguished in these notes; but it by no means follows that in default of payment he was willing to be compensated by the value of these notes in gold.

We insist, therefore, that if the date of the maturity of the note is adopted for the purpose of ascertaining the damage, the measure should be, not the value as compared to gold, but its relative value in property.

But the decree denies any right to recover anything, and evidently proceeds upon the ground that the contract was an illegal one, because it was to be paid in Confederate money.

It will be borne in mind that neither the answer nor the evidence afford any presumption that the contract was entered into for the *purpose* of giving currency to these notes, and thus indirectly aiding in carrying on the Rebellion. If there was no illegal *design*, the contract was neither immoral nor illegal.

Hodson *vs.* Temple, 5 Taunt., 181.
Dexter *vs.* Earle, 3 Gray, 482.
Holman *vs.* Johnson, Cowp., 341.
Orchard *vs.* Hughes, 1 Wall., 75.

In the case of Keppel *vs.* Petersburg Railroad Company, the Chief Justice considered this question. The company had received Confederate money for their earnings. He says, "at the time several of the dividends were declared, Confederate money was the chief currency, and, when the others were declared, almost the entire currency of that part of the country in which the railroad was operated; and whatever currency of bank notes there may have been in circulation was of no greater real value. This currency may fairly be said to have been imposed on the country

by irresistible force. There was no other in which the current daily transactions of business could be carried on, and there could be no other while the rebel government kept control over the rebel States. The necessity for using this currency was almost the same as the necessity to live. No protest, no resistance, no rejection could avail anything. At the same time this currency, though it depreciated rapidly, had a sort of value. Its redemption though improbable, was not impossible, and, until the downfall of the Confederacy, it had a greater or less degree of purchasing power."

See also the cases of Miller *vs.* Gould, 38 Geo., A. L. R., May, 1869; Phillips *vs.* Hooker, A. L. R., November, 1867.

P. PHILLIPS,
Of Counsel for Appellant.

WASHINGTON, *October* 1, 1869.